United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: April 23, 2010

TO : James J. McDermott, Regional Director

Region 31

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Olympia Medical Center

Case 31-CA-29478

This case involving Section 8(a)(1) and (5) allegations was submitted to Advice for review in light of the current dispute between SEIU-UHW-W ("SEIU") and NUHW. Charging Party SEIU alleges that the Employer unlawfully denied access to its representatives and engaged in surveillance and/or created the impression of surveillance. We conclude that the charge should be dismissed, absent withdrawal.

SEIU is the 9(a) representative of a unit of employees at the Employer's hospital who were covered by a collective-bargaining agreement at all times relevant to this charge. The contract contains a provision that permits "a duly authorized Field Representative of the Union" to access the hospital at reasonable times to ensure contract compliance and investigate unit employee complaints. The Field Representative must advise the HR Director or his/her designee of each such visit. Moreover, upon request to HR, the Employer provided SEIU reasonable access to conference rooms, based upon availability, in accordance with scheduling procedures and use limitations.

In August 2009, when NUHW began its organizational activities, SEIU informed the Employer that it was assigning additional representatives to the hospital, and began visiting more frequently than they had in the past. The Employer infers that this increased presence is due to campaigning and organizing, and there is no contractual basis for even a single Field Representative having access to organize. A single, short-term SEIU representative claims that before August, he was allowed unlimited access to non-public hospital areas. The Employer informed SEIU that under its interpretation of the contract, only one Field Representative could have access to the hospital at a time. Nevertheless, it allowed additional representatives to be in the public cafeteria and was willing to allow use of conference rooms when properly requested.

From August to September, the Employer hired additional security quards in reaction to SEIU's attempts to have more than one Field Representative enter the hospital without following the procedures in place for nonemployee access to the hospital (informing HR and using a designated entrance). The Employer attributes its increased monitoring of SEIU representatives in the facility to its suspicion of organizational rather than representational activity in addition to increased numbers of SEIU representatives entering and using the facility without following established procedures. It particularly relies on disruptive incidents including September 29, when 25-30 SEIU members arrived at the hospital without having first contacted the Employer and entered restricted, nonwork areas posting flyers on hallways and stairwells on every floor in violation of Employer policy. Subsequently, the Employer only permitted SEIU access to meet with employees in public hospital areas.

We conclude that since August, the Employer's limitation on the number and areas to which an SEIU Field Representative could access its facility was lawful. Its interpretation that the contractual access provision, worded in the singular rather than plural, gives SEIU the right to have only one non-employee representative at a time in the hospital is certainly not unreasonable and provides a basis to limit access even assuming SEIU was not engaged in organizational activities. Moreover, there is insufficient evidence based on a single representative's claims that Field Representatives previously were allowed to enter non-public hospital areas, and there is no evidence contradicting the Employer's position that SEIU's

 1 We note that the Employer's inference that SEIU's insistence on access by more than one Field Representative was to engage in organizational rather than representational communication is supported by the increased number and length of visits coinciding with the beginning of NUHW's organizational campaign. The September 29 unauthorized posting of organizational flyers throughout the hospital bolsters the Employer's belief that SEIU's attempted increased presence in the hospital was not for contract administration purposes. The Employer was aware of the NUHW campaign, and that entity had no access rights. Therefore, it was required to remain neutral although the incumbent SEIU had certain access rights which had to be honored. See Laub Baking Co., 131 NLRB 869, 871 (1961) (no 8(a)(2) violation when rival union requested access and employer, after learning incumbent began campaigning during its contract administration visits, took reasonable efforts to enforce its no-electioneering policy against incumbent).

prior use of conference rooms to conduct meetings was permitted only when properly requested, consistent with established scheduling procedures and use limitations.

Finally, to the extent that the Employer engaged in increased and allegedly unwarranted surveillance, we conclude that its conduct was justified given the totality of the circumstances here. There is insufficient evidence that the Employer was aware of any pre-September 29 monitoring of SEIU conversations by its security quards since SEIU had not complained of such conduct and, to the extent that guards did engage in such activity, it appears they were unfamiliar with Employer policy and walked away from SEIU-employee conversations when requested to do so by the Field Representative. Subsequent to September 29, the Employer lawfully increased its security force and monitoring of SEIU presence in the facility based on its concern that field representatives were likely to continue trying to gain access to the hospital without adhering to the prescribed notification and authorized entrance procedures.

Accordingly, absent withdrawal, this charge should be dismissed in its entirety.

B.J.K.